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BOOK REVIEWS.

A TREATISE ON THE LAW OF FRAUD AND MISTAKE. By William Williamson Kerr. Third Edition. By Sydney E. Williams. London: Sweet & Maxwell, Limited. 1902. pp. lxv, 557.

This is a new edition in fact as well as in name. The revision is not limited to the addition of the titles of late cases in the notes, or even to the insertion of extracts from such cases in the text. It is a thorough and careful piece of work, extending to the rewriting of large portions of the original book. The volume, too, is an admirable specimen of the publisher's art, conveying the impression that both the editor and publisher regard this treatise as worthy of being presented to the reader in handsome dress.

In the opening chapter mistake is defined as ignorance not caused by the act of the other party; misrepresentation as ignorance caused by the act of the other party without wrongful intention; fraud as ignorance caused by the other party with wrongful intention. One would expect a writer, who presented these definitions in the order given above, to discuss the topics in the same order. This he does not do, however. On the other hand he reverses the order—dealing briefly with fraud, then discussing more at length misrepresentation, following this discussion of principles with the application of general doctrines to particular kinds of fraud, and closing with a rather general statement of the rules relating to mistake of law and mistake of fact. Although, in our judgment, the topics would better have been presented in the order of their definition by the author, we take pleasure in bearing testimony to the ability with which each topic is treated.

The least satisfactory part of the book is that which is devoted to clearing up what the editor declares to be the confusion into which the whole subject of misrepresentation has been thrown by the decision in Derry *v.* Peek;[1] "or rather," he adds, "by the supposed effects of that decision—a decision which has given rise to an extraordinary amount of doubt, difficulty, discussion and vigorous dissent." That the decision has been vigorously assailed in England is true. Sir Frederick Pollock sounded the tocsin in 5 *Law Quarterly Review* 410, and still maintains an attitude of active hostility, as is apparent from a note in the current number of that Review. In this note he declares that Derry *v.* Peek "is not accepted so far as I know, in the principal American jurisdictions." Evidently, Sir Frederick is not acquainted with Nash *v.* Minnesota Title Insurance and Trust Co.,[2] and Kountze *v.* Kennedy,[3] for in those cases, the Supreme Judicial Court of Massachusetts and the Court of Appeals of New York unhesitatingly approved of the decision and the reasoning in Derry *v.* Peek. But while its critics are many and able, the case has also had its stalwart defenders in England, of whom Sir William Anson may be accounted

[1] (1889) 14 App. Co. 337. [2] (1895) 163 Mass. 574.

[2] (1895) 147 N. Y. 124.

chief. We can but think that if Mr. Williams had shared the views expressed so forcibly by Sir William Anson, in 6 *Law Quarterly Review* 72 (a reply to Sir Frederick Pollock's criticism above referred to) and in his work on contracts, this edition of Kerr on Fraud and Mistake would have been even better than it is.

A TREATISE ON THE AMERICAN LAW OF REAL PROPERTY.—By Emory Washburn. Sixth edition. By John Wurts. Boston: Little, Brown & Co. 1902. 3 vols. pp. clxx, 579, 706, 636.

It is a hard saying, but one not likely to be controverted by those to whom these presents shall come, that the enormous labor that has gone into the revision of this book might have been put to better use. If Washburn was to have a new lease of life Professor Wurts was obviously the man to confer the boon; but it is not easy to understand how that hard necessity came to be laid upon him. Surely the man who could revise and annotate the monumental work of the Harvard professor of half a century ago in the thorough-going fashion of this edition might have set himself the worthier task of producing a book of his own on the law of real property, and it must have gone hard with him if it had not turned out to be a more useful production than any possible revision of Washburn.

The truth of the matter is, the Washburn fetish has imposed its authority upon the legal profession much too long, and it is high time for it to be overthrown and cast out. It is not enough to say that a book whose only competitors are Tiedeman and Pingrey is the best, or even the only book for the American practitioner. So much the more reason for giving the profession a better one. Some excellent treatises, indeed, we have on special topics in the law of real property. Rawle, on Covenants; Gray, on Perpetuities, and on Restraints in Alienation; Taylor, on Landlord and Tenant; Gould, on Waters; Chaplin, on Alienation, are all good—some of them admirable—after their kind; but no American lawyer has yet produced a general treatise on real property which can be compared with the English works of Williams and Leake. It is a matter for regret, therefore, when such a man as the late Professor Hammond expends his great learning on the annotation of Blackstone, when the powers of Professor Hutchins are diverted into the editing of an English treatise on real property for the American market, and when, as here, the industry of the learned Yale professor results in nothing more significant than the rehabilitation of a second-rate law book. It is not that these things are not worth doing, but that they are not the things that are best worth doing.

Washburn's work has always been a practitioner's and not a student's book, and its character in this respect has not been changed by this latest revision. It remains a dry, uninteresting and conventional arrangement of the rules of property law, with no discussion of disputed points, no attempt to reconcile conflicting authorities, no explanation of inconsistencies, no reasoned presentation of legal principles, no historical or social perspective. Nowhere does the personality of the author or the editor appear. No one would guess from reading it—if, indeed, it were a book to be read—that, like all legal text books, it was a collection of the opinions of the writer. It has the authoritative air of the revised statutes and the literary charm